

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

CHOBANI, LLC,

Plaintiff,

v.

THE DANNON COMPANY, INC.

Defendant.

**CIVIL ACTION NO. 3:16-cv-00030-DNH-DEP**

**ECF Case**

**Hon. David N. Hurd**

**DEMAND FOR JURY TRIAL**

THE DANNON COMPANY, INC.,

Counterclaim Plaintiff,

v.

CHOBANI, LLC

Counterclaim Defendant.

**DECLARATION OF JEFFREY ROTHMAN IN SUPPORT OF  
DANNON'S MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

I, Jeffrey Rothman, hereby declare and state as follows:

1. I am the Vice President of Marketing of Defendant and Counterclaim Plaintiff

The Dannon Company, Inc. ("Dannon"). I submit this declaration in support of Dannon's motion for a temporary restraining order and preliminary injunction to immediately stop Chobani, LLC from falsely advertising that Dannon's Light & Fit® Greek nonfat yogurt is bad for consumers, unhealthy for consumption and contains chlorine. I am over the age of eighteen (18) and am competent to attest to this Declaration. I have personal knowledge of the facts set forth herein, and I could competently testify hereto.

2. I received a Bachelor of Arts, College of Arts & Sciences at Cornell University, 1994 and a Masters of Business Administration, The Anderson School of Management at UCLA in 2001. I have been employed by Dannon for almost eleven years, holding a variety of positions within the marketing department. Since September 2013, I have served as Dannon's Vice President of Marketing and, in this capacity, I manage the Dannon Light & Fit® brand.

3. Dannon is based in New York and produces many yogurt and dairy products under numerous brand names. Dannon products are sold in well over 35,000 retail outlets, such as supermarkets, convenience stores, cafes, etc., as well as online retail outlets. Dannon products are also carried by institutions such as hospitals, hotels, schools, and the like.

4. Dannon was founded in the Bronx, New York and has operated in New York since 1942. It has expended hundreds of millions of dollars growing and building its brand equity. As a result, Dannon has developed a reputation as a trusted and reliable brand of yogurt and dairy products because of its innovative and delicious products, credible marketing and quality manufacturing.

5. In 1988, Dannon introduced a reduced-calorie, nonfat yogurt initially called "Dannon Light," which is now marketed under the Dannon Light & Fit® brand. Over time, Dannon has become famous in the United States for its light yogurts and has developed enormous goodwill in its light products.

6. Dannon Light & Fit® is the leading brand of light yogurt in the United States. The Dannon Light & Fit® brand is the company's top seller.

7. Dannon Light & Fit® is an ideal food option for individuals who need to be mindful of their sugar intake, and is targeted to health-conscious consumers, often women, who make purchasing decisions for themselves and for their families. Over time, as a result of

developing health trends, Dannon has produced specific healthy sub-brands of its Light & Fit® products. One such sub-brand, which was introduced in 2012, is Dannon Light & Fit® Greek nonfat yogurt. This was the first 80 calorie Greek nonfat yogurt on the market.

8. In general, light yogurts have a boom period in the first three months of each year, as this is the time when most American consumers resolve to make positive changes relating to weight loss, fitness, and overall health and diet. Dannon's highest proportion of sales of light yogurt routinely occurs during the first quarter of each calendar year. This is also the time of year when new yogurt products are most commonly tried by consumers for the first time.

9. The first quarter of the year – especially January, when new products are most frequently launched – is the most critical time for Dannon to strengthen its relationship with existing consumers and to acquire new consumers. As a result, Dannon's marketing and sales efforts during each year's first quarter are crucial to the success of the business.

10. Dannon just learned that Chobani – a direct competitor – has launched a new advertising campaign for its “Chobani Simply 100” brand of Greek yogurt (the “Simply 100 Advertisements”). Chobani's Simply 100 Advertisements appear to include at least a commercial (the “Simply 100 Commercial”), a print advertisement (the “Simply 100 Print Ad”), and digital/social media content (the “Simply 100 Digital Content”).

**Chobani's Simply 100 Commercial<sup>1</sup>**

11. The Commercial materially misrepresents the qualities and characteristics of Dannon's Light & Fit® Greek nonfat yogurt by depicting a woman next to a prominently featured swimming pool eating Dannon Light & Fit® Greek nonfat yogurt and reading from the nutrition label. When the voice narrator states that the product contains sucralose, the woman

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<sup>1</sup> The Chobani Simply 100 Commercial can be found in the following link [https://youtu.be/\\_9qM-bdH6Rg](https://youtu.be/_9qM-bdH6Rg).

makes a disgusted face, and trashes the Dannon Light & Fit® Greek nonfat yogurt into a receptacle as the voice narrator continues, “That stuff has chlorine added to it!”

12. The woman in the Commercial then proceeds to eat Chobani Simply 100 Greek yogurt instead. The scene shifts to a child jumping into the chlorinated swimming pool, and concludes with a printed hashtag stating that Chobani Simply 100 Greek yogurt contains “#NOBADSTUFF.”

13. The Simply 100 Commercial falsely claims that Dannon Light & Fit® Greek nonfat yogurt: (1) contains added chlorine; (2) contains an ingredient – sucralose – that is “bad stuff” because it has “chlorine added to it”; (3) should be thrown away because it is bad and unsafe; and (4) contains chlorine of the type found in a swimming pool; and it also (5) makes a false comparison between Dannon Light & Fit® Greek nonfat yogurt and Chobani Simply 100 Greek yogurt, in that it states that Dannon’s product is bad because it contains chlorine while Chobani’s product is good because it does not.

**Chobani’s Simply 100 Print Ad**<sup>2</sup>

14. The Simply 100 Print Ad prominently features the deceptive phrase “Did You Know Not All Yogurts Are Equally Good For You?” In the center of the advertisement, an image of the nutritional value label on a cup of yogurt identified as “Dannon Light & Fit Greek” is featured.

15. The Simply 100 Print Ad states, “You think you are doing something good for yourself and your family by buying yogurt instead of bad stuff, and then you find that the bad stuff is in your yogurt!” An arrow is drawn to the Dannon Light & Fit® Greek nutritional value label along with the text, “There’s sucralose used as a sweetener in Dannon Light & Fit Greek!”

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<sup>2</sup> The full Simply 100 Print Ad is attached hereto as Exhibit A.

Sucralose? Why? That stuff has chlorine added to it!" The Simply 100 Print Ad concludes, "If you want to do healthy things, know what's in your cup."

16. These statements are false and misleading. They falsely state that sucralose is "bad stuff" and that Dannon Light & Fit® Greek nonfat yogurt contains added chlorine. They also falsely state that Dannon Light & Fit® Greek nonfat yogurt is not "healthy."<sup>3</sup>

**Chobani's Simply 100 Digital Content**<sup>4</sup>

17. The Simply 100 Digital Content primarily resides at the website [www.thelightthat'sright.com](http://www.thelightthat'sright.com), which is dedicated to advertising and marketing materials for Chobani Simply 100 Greek yogurt. This website URL is provided in links from each of Chobani's social media networks, including Facebook, Twitter, Pinterest, Google+, and Instagram.

18. The Simply 100 Digital Content contains links to the Simply 100 Print Ad (discussed above) and contains additional text about Dannon Light & Fit® Greek nonfat yogurt's inclusion of sucralose. Notably, the Simply 100 Digital Content states in large text, "Do You Know What's In Your Cup? ... Scroll over to compare our ingredients with those in other light yogurts to see what's really inside." The content includes an image of Dannon Light & Fit® Greek nonfat yogurt that, when selected, displays the product's nutrition label and lists several items identified in an alarming large red font as "artificial."

19. The Simply 100 Digital Content expressly refers to Dannon Light & Fit® Greek nonfat yogurt, and falsely and necessarily implies that (1) Dannon's product contains unhealthy and harmful ingredients, and (2) that Dannon tries to hide its use of harmful ingredients from its

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<sup>3</sup> The United States Food & Drug Administration ("FDA") sets forth specific standards regulating when food products can be labeled "healthy." 21 C.F.R. § 101.65(d)(2). Dannon Light & Fit® Greek nonfat yogurt satisfies these requirements and is therefore objectively "healthy" under FDA regulations.

<sup>4</sup> Examples of Chobani's Simply 100 Digital Content are attached hereto as Exhibit B.

consumers. In reality, Dannon Light & Fit® Greek nonfat yogurt does not contain harmful ingredients, and Dannon does not try to hide its ingredients or nutritional content from its consumers.

**Chobani's False Advertising is Causing Immediate and Irreparable Harm**

20. Chobani has released the Simply 100 Advertisements right now in the crucial first-quarter period of the year, during which time Dannon's ability to attract new and retain existing consumers is at its most critical level.

21. Chobani's Simply 100 Advertisements will therefore cause consumers to believe, incorrectly, that healthy Dannon's Light & Fit® Greek nonfat yogurt is bad for them and contains unsafe chemicals. These false claims and statements erode the trust of existing Dannon Light & Fit® consumers – the majority of whom are health-conscious individuals – and interfere with Dannon's ability to attract new consumers during the vital first quarter of 2016. Chobani's false advertising will also materially impede Dannon's ability to successfully launch additional Light & Fit® Greek sub-brands during the critical January launch window.

22. Dannon has maintained its Light & Fit® brand's integrity and secured the trust of its long-term consumers by virtue of its consistent offering of high-quality, healthy reduced-calorie products for nearly three decades.

23. This brand equity, reputation and trust are the most valuable intangible assets Dannon possesses. Brand success among the consuming public is very highly correlated to the degree of trust that public has in the company and the specific characteristics of the product. Specifically, consumers are more likely to prefer consuming, regularly purchase, and recommend a brand they trust over competing brands.

24. Once brand trust is eroded and a consumer decides to stop purchasing a particular brand, it is extremely difficult – if not impossible – to repair that trust and to reconnect with that consumer. The resulting damage is immediate and incalculable.

25. Chobani's false advertising threatens to destroy the consumer trust that Dannon has established over its nearly seventy-five year history by the false statements that Dannon products are "bad"; that they contain added chlorine; that they are unhealthy; that Dannon is hiding the true (harmful) ingredients in its products; and that therefore, the yogurt should be thrown in the trash.

26. Research has shown that product safety is the number one attribute driving consumer choice about food and beverage products. Chobani's immediate and irreparable damage to the perceptions of Dannon Light & Fit® Greek's food safety is therefore likely to cause consumers to reconsider their loyalty to Dannon overall, resulting in significant harm to Dannon's goodwill and reputation.

27. The United States is also an under-developed market for yogurt, as per capita consumption in this country is significantly lower than in many other parts of the world. Chobani's false, negative claims about the light yogurt offered by a leading brand significantly undermine consumer trust in the brand category of yogurt generally, thereby further reducing the U.S. market for yogurt. This result is harmful to consumers, whom are encouraged to regularly consume healthy dairy sources like low-fat or fat-free yogurt.<sup>5</sup>

28. The only way to minimize the significant harm that the Simply 100 Advertisements pose to Dannon is for Chobani to be immediately enjoined from continuing to run such advertising.

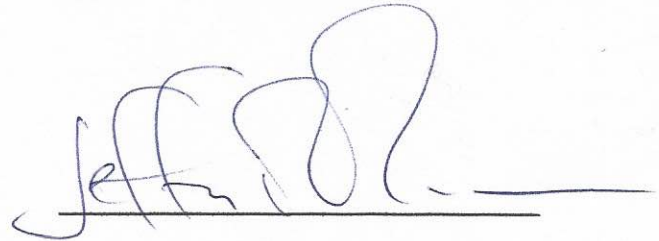
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<sup>5</sup> The United States Department of Agriculture ("USDA")'s newly issued *2015-2020 Dietary Guidelines for Americans* suggests that Americans should consume "fat-free or low-fat daily, including milk, yogurt, cheese, and/or fortified soy beverages."

29. Every day that the Simply 100 Advertisements continue to reach the public – especially during the crucial period of January through March – Dannon’s risk of irreparable reputational injury, irreparable loss of consumer trust, and incalculable loss of sales grows.

30. If Chobani’s false advertising is allowed to continue, Dannon will lose any opportunity to mitigate its damages, and the harm caused will be irreversible. Dannon requests that Chobani be enjoined from continuing to disseminate its false, misleading, disparaging and unsubstantiated advertising immediately.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10 day of January 2016, at Nyack, New York.

A handwritten signature in blue ink, appearing to read 'Jeffrey Rothman', is written over a horizontal line.

JEFFREY ROTHMAN